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CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT

Second periodic reports of States due in 1990

Addendum

TOGO*

[29 December 1993]

Information concerning the internal measures adopted to guarantee the rights and freedoms contained in the International Covenant on Civil and Political Rights

1. The laws governing the new Togolese institutions were drafted by persons who were greatly inspired by the ideals of promotion and protection of human rights. The Constitution is revealing. It gives a prominent place to the rights and freedoms guaranteed by the International Covenant on Civil and Political Rights. The provisions of the new Constitution and other legislation and regulations should subsequently be harmonized.

2. The part of the report concerning the general information to be furnished, in accordance with the consolidated guidelines for the initial part of the reports of States parties to be submitted under the various international human rights instruments, including the Covenant (HRI/CORE/1, annex) is contained in the core document of Togo (HRI/CORE/1/Add.38), which members of the Committee are requested to consult.

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* For the initial report submitted by the Government of Togo, see CCPR/C/36/Add.5; for its consideration by the Committee, see CCPR/C/SR.870, SR.871, SR.874 and SR.875, and Official Records of the General Assembly, Forty-fourth session, Supplement No. 40 (A/44/40), paras. 233-270.

Article 1

1. The right of peoples to self-determination

3. Togo is committed to the principle of the right of peoples to self-determination. Every people should be master of its own destiny. The recognition of this universal principle heralded the independence of the States under colonial domination. Togo has always worked for the accession of all States to international sovereignty.

4. This is a recognized principle, albeit not one that is formally expressed in the Togolese Constitution, since international treaties and agreements which are duly ratified or adopted in accordance with the provisions of article 140 of the Constitution take precedence over internal legislation, subject to the application of each agreement or treaty by the other party.

2. The right of peoples freely to dispose of their natural wealth and resources

5. The freedom to dispose of its wealth contributes to the economic and social development of a people. In its national and international policy, Togo respects that right.

6. At no time in its history has Togo ever violated the right of other peoples to the enjoyment of their wealth.

7. Togo fishes exclusively in its own internal waters, and exploits the natural wealth situated in its own territory.

8. At the national level, Togo believes firmly in the protection of private property. The provisions of the Covenant concerning the freedom to dispose of wealth are not included in the Togolese Constitution, but are automatically observed.

Article 2

1. Ensuring the enjoyment by all Togolese citizens or foreigners the rights recognized by the Covenant

9. Article 10 of the Togolese Constitution provides that all human beings have inherent, inalienable rights which the State is bound to respect and safeguard. No consideration of race, religion, sex or property can be grounds for derogating from that requirement.

2. The obligation to adopt constitutional measures for implementing the rights recognized in the Covenant

3. Ensuring remedies; judgements and the execution of decisions taken in cases of violation

10. The obligations provided for in article 2, paragraphs 2 and 3, were discussed in the core document (HRI/CORE/1/Add.39, paras. 65-71).

Article 3

The principle of non-discrimination on the ground of sex

11. In respect of the enjoyment of civil and political rights, the Togolese Constitution contains no restriction on the ground of sex. According to the provisions of article 11, all human beings are equal in dignity and in rights. This text states unequivocally that men and women are equal before the law.

12. Political and trade union freedoms are recognized as the right of both men and women. Both are entitled to vote and to be elected.

13. However, it is not always easy to find absolutely equal enjoyment of rights by men and women on a day-to-day basis. There has always been and still is an ongoing struggle to achieve that equality.

Articles 4 and 5

Derogations

14. Article 4 of the International Covenant on Civil and Political Rights entitles the States parties, in case of grave danger, to make derogations in respect of certain rights. The Covenant also specifies the rights which are non-derogable. The Secretary-General of the United Nations must be notified of any derogations.

15. The Togolese Constitution does not specify the rights in respect of which derogations are permitted. It merely provides in article 94 that a state of siege and a state of emergency shall be decreed by the President of the Republic in the Council of Ministers. This text provides that the conditions for the application of a state of siege and a state of emergency shall be determined by an organic law.

16. No state of siege has been decreed in Togo to date.

Article 6

The right to life

17. The right to life is sacrosanct and as such must be afforded the greatest protection.

18. The right to life is protected by the Togolese Constitution of 14 October 1992, article 13 of which stipulates that: "The State has an obligation to guarantee physical and mental integrity, the life and security of any person living in the national territory".

The death penalty

19. Under Togolese law, the death penalty may only be imposed in exceptional circumstances (intentional homicide: art. 45 of the Penal Code; crimes against the security of the State: arts. 222, 223, 229, 231 of the Penal Code).

20. The right to grant a pardon is the prerogative of the head of State, who exercises it in the light of an opinion given by the Supreme Council of Justice (art. 73 of the Constitution). The procedure to be followed in petitioning for the right of pardon is set out in articles 515-522 of the Togolese Code of Criminal Procedure.

21. The conditions for the execution of the death penalty are laid down in articles 491-494 of the same Code.

Article 7

Physical or mental torture and cruel, inhuman or degrading treatment or punishment

22. The practice of torture is strictly forbidden. This is a provision which cannot be derogated from under any circumstances.

23. In Togo, there can be no justification for practising torture, for in addition to article 5 of the African Charter on Human and Peoples' Rights to which it is a party, Togo also ratified in 1987 the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

24. Torture has always been condemned. Article 21 of the new Constitution provides for the effective punishment of the practice of torture.

Prohibition of the slave trade

25. Togo is a party to the international instruments which prohibit the slave trade and all other slavery-like practices. On 14 March 1990, Togo ratified the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others.

26. Slavery is not practised in Togo. Provisions concerning slavery are not the subject of major concern and consequently there are none in the new Constitution.

Articles 9 and 11

The right of everyone to liberty and security of person

27. Everyone is entitled to have his security and liberty guaranteed. This encompasses the prohibition of arbitrary arrest (art. 15 of the Constitution).

28. The arrest, indictment and sentencing of defendants are regulated by the Code of Criminal Procedure. Similarly, articles 15-20 of the 1992 Constitution lay down the conditions of arrest of persons accused of breaking the law. Article 19 provides for compensation for damage resulting from a miscarriage or malfunctioning of justice.

The prohibition of arbitrary arrest

29. The conditions under which an individual may be questioned and arrested are strictly laid down by the law. An individual may be arrested and charged only with good cause, namely, a breach of the criminal law.

30. Under Togolese law, indictment is regulated by article 92 of Act No. 83-1 of 3 March 1983 establishing the Code of Criminal Procedure.

31. It is strictly forbidden to arrest anyone for a civil or commercial debt.

32. Police officers are not entitled to make an arrest without a warrant except in the case of flagrante delicto.

Article 10

The treatment of prisoners

33. The conditions of treatment of defendants and detainees such as respect for their dignity and the rule regarding segregation of accused persons from convicted persons and adult prisoners from juvenile prisoners are provided for by the Constitution (arts. 16 and 17); by Order No. 488 of 1 September 1933 on the prison system in Togo (arts. 9, 10, 16); and by the decree of 30 November 1928 on the regulations pertaining to minors.

34. In practice, the imprisonment and living conditions of prisoners and their preparation for returning to society are not properly ensured because of a lack of financial resources. The prison authorities often adduce financial problems as the reason for the difficulties in applying these various measures.

Articles 12 and 13

Liberty of movement and prohibition of arbitrary expulsion

35. Everyone has the right to liberty of movement throughout the national territory. In the Togolese legal tradition, no one may be arrested without a warrant from an examining magistrate except in cases of flagrante delicto, as provided for in articles 43-60 of the Code of Criminal Procedure.

36. Pre-trial detention is considered as an exceptional measure (art. 112 of the Code of Criminal Procedure).

37. Similarly, the Penal Code punishes the confinement and abduction of minors.

38. Liberty of movement implies the right to leave and to return to one's country at any time and without risk of persecution. No Togolese may be deprived of the right to enter or leave Togo.

39. Article 22 of the Constitution provides that:

> "Every Togolese citizen has the right to freedom of movement and freedom to settle in the national territory at any place of his choice under the conditions stipulated by the law or local custom".

40. During the democratic process, citizens' freedom of movement was restricted by acts of violence and the insecurity which prevailed in the towns and the countryside.

41. Any alien lawfully in Togolese territory who abides by the laws in force has the freedom to travel and choose his place of residence therein and the right to leave it freely. This freedom implies an obligation to refrain from mass expulsions of foreigners.

42. Articles 23 and 24 of the Constitution provide that:

> "Article 23. An alien may only be expelled or extradited from the national territory of Togo by virtue of a decision in accordance with the law. He must be given the opportunity to defend himself before the competent judicial authority.
>
> Article 24. No Togolese may be extradited from the national territory."

43. Togo has concluded extradition conventions with the Republic of Benin, the Federal Republic of Nigeria and the Republic of Ghana.

Article 14

Equality of citizens before the law

44. The principle of the equality of citizens before the law is guaranteed in Togolese legislation. Every citizen is entitled to have his case heard by the courts. There is not one kind of justice for the rich and another for the poor. Under article 7 of Ordinance No. 78-35 of 7 September 1978 concerning the organization of the judicial system in Togo, all hearings must be held in public unless this constitutes a danger for public order or morals.

The right to go to court

45. Various texts recognize the right of everyone to bring a matter freely before the Togolese courts (arts. 5-7 of Act No. 80-1 of 13 August 1980, concerning the Togolese Penal Code). Everyone is entitled to invoke in Togolese courts the rights and freedoms guaranteed by the law.

The presumption of innocence

46. It is a principle of criminal law that everyone is presumed innocent until he is proved guilty and so declared by the courts. This principle is laid down in article 18 of the Togolese Constitution.

The right to a defence

47. Everyone has the right to defend his interests before the Togolese courts. Article 11 of Ordinance No. 78-35 of 7 September 1978 concerning the organization of the judicial system in Togo specifies that:

> "In no case may anyone be tried without being given the opportunity to put forward a defence. Lawyers shall have free access to all courts. Everyone shall be free to prepare his defence and to choose defence counsel."

48. Similarly, during the examination phase, the magistrate is obliged to inform the accused of his right to choose counsel (art. 92 of the Code of Criminal Procedure).

49. The assistance of a lawyer is mandatory in criminal cases (art. 186 of the Code of Criminal Procedure).

Safeguarding the independence of the courts

50. The Constitution provides for the independence of the judiciary. The Supreme Council of Justice and the status of judges are also provided for in the constitution.

The right of everyone to be tried within a reasonable period

51. Defendants and accused persons must be tried within a period consistent with the protection of human rights.

52. Anyone accused of a crime or offence is presumed innocent until he is sentenced by a criminal court.

53. Legal procedures afford accused persons who are not tried within the legal time-limit the opportunity to apply for release on bail.

54. Under article 113 of the Togolese Code of Criminal Procedure, an accused person domiciled in Togo may not be detained for more than 10 days after his first appearance before the examining magistrate.

55. Release is automatic or may be ordered ex officio.

56. In the Assize Court, accused persons may not be tried more than six months after the order of committal for trial (art. 202 of the Code of Criminal Procedure).

57. The Togolese judicial system is rather slow, mainly because of a shortage of judges.

The procedure applicable to minors

58. In criminal proceedings, minors have the benefit of protective treatment. Young persons under 13 years of age are not criminally responsible (art. 455 of the Code of Criminal Procedure).

59. Minors are tried by a special judge (the juvenile magistrate).

60. Publicity is forbidden in proceedings involving minors. Penalties for acts committed only exceptionally are not noted in section 3 of the judicial record.

61. The procedure for the investigation and trial of cases involving minors is governed by title X of the Code of Criminal Procedure, the decree of 30 November 1928 which is still in force in Togo, and Ordinance No. 5 of 17 February 1969 establishing juvenile courts.

Article 15

The prohibition of retroactive sentencing

62. Articles 1 and 2 of the Togolese Penal Code forbid the imposition of criminal penalties for unlawful acts committed prior to the entry into force of the criminal law concerned.

63. Under no circumstances may a judge impose a criminal penalty for acts which did not constitute an offence at the time they were committed.

Article 16

The right to legal personality

64. Every individual is entitled to the recognition of his legal personality, which enables him to enjoy all his inherent rights as a human being.

65. The capacity to enjoy these rights is sometimes restricted by legislation. This occurs in the case of guardianship and of the legal administration of the property of unemancipated minors, of persons suffering from degeneration or major disabilities (cases of insanity or other forms of deterioration of the mental faculties: arts. 316 ff. of the Individuals and Family Code).

66. A minor is an individual of either sex who has not reached the age of 21. This means minority for civil purposes, as provided for by article 265 of the Individuals and Family Code; the age of criminal and political majority is 18.

Article 17

Protection of the family, the home and correspondence

67. In Togo, family law is regulated by Ordinance No. 80-16 of 31 January 1980 establishing the Individuals and Family Code. The Code includes provisions governing name, marriage, descent, matrimonial regimes, parental authority and inheritance.

68. The Individuals and Family Code deals extensively with problems involving the protection of women and children but it is silent on the question of protection of the elderly. However, article 33 of the 1992 Constitution provides an encouraging solution by making it obligatory for the State to protect the rights of elderly persons.

69. The Togolese penal code for its part lays down various penalties for non-observance of family law - for instance, offences against the family order (arts. 71-77) and offences against morality.

70. The prohibition of the violation of a person's home and the secrecy of correspondence are provided for in articles 28 and 29 of the 1992 Constitution.

71. The Code of Criminal Procedure contains provisions regulating the procedures for investigation and search which require strict respect for a person's home.

Article 18

Freedom of conscience and religion

72. Freedom of thought, conscience and religion is established in article 25 of the Togolese Constitution. Today all religions are practised freely.

Article 19

Freedom of expression and freedom of the press

73. Freedom of the press is governed by Act No. 90-25 of 30 November 1990 establishing the Press Code. In Togo, there are currently more than 60 private newspapers, in addition to the official press organs.

74. As a result of their struggle, the Togolese people have succeeded in ensuring freedom of expression for themselves. The associations for the defence of human rights are active in their support for this freedom, which is protected by articles 25 and 26 of the Constitution.

Article 20

Prohibition of incitement to racial, religious or tribal hatred or to war

75. Incitement to racial, religious or tribal hatred or to war is a threat to peace. Togo has long been devoted to ensuring peace. However, the political events which have occurred in Togo during the last three years have somewhat disturbed this policy of peace.

76. Any racist, regionalist or xenophobic act is punished (art. 48 of the Constitution). These offences are considered by the Togolese Penal Code to constitute attacks on the internal security of the State (art. 231 of the Penal Code).

77. In order to ensure better protection for the internal security of the State, steps must be taken to correct the behaviour of citizens who have mistakenly disregarded their obligation to protect the nation, thereby nearly endangering its security.

Article 21

The right of assembly

78. Trade union freedom and the freedom of association are guaranteed, and therefore there should be no restrictions on the right of assembly except as provided for by law.

79. Articles 180-189 of the Penal Code punish any demonstrations or meetings calculated to disturb the peace, violate law and order, damage public health or undermine the security of property and individuals.

Article 22

Freedom of association

80. Freedom of association has developed rapidly since democracy was introduced in Togo. It is guaranteed by article 30 of the Constitution.

81. The formation of associations is governed by the French law of 1 July 1901, which was made applicable in Togo by decision No. 265 Cab. of 8 April 1946. There are currently over 1,600 associations operating throughout the national territory. They include associations for the defence of human rights, religious associations and associations for the promotion of democracy.

82. Associations are established by simply making a declaration to the Ministry of Territorial Administration and Security after the deposit of their statutes, the rules of procedure, a list of the members of the executive committee and a list of the founder members. They operate freely even before an acknowledgement of receipt.

83. In addition, political parties have been formed freely since the adoption of the Charter of parties pursuant to Act No. 91-4 of 12 April 1991. More than 62 political parties have been registered to date. According to information obtained from the Ministry of Territorial Administration and Security, these political parties have all obtained their acknowledgement without any let or hindrance

Article 23

The protection of the family

84. The family is protected in Togo by various provisions of Ordinance No. 80-16 of 31 January 1980 establishing the Individuals and Family Code and by article 31 of the Constitution.

85. The rights protected by the Individuals and Family Code include:

(a) The right to marry, which is granted to men of 21 years of age and to women of 18 years of age (art. 43), excepting derogations for emancipated minors;

(b) The right to the expression of mutual consent (art. 44);

(c) The mutual obligations of assistance and fidelity to the marital partnership (arts. 99-117);

(d) The right to initiate divorce proceedings, which is granted to both the man and the woman (arts. 118 ff.);

(e) The exercise of parental authority, which is granted to both the man and the woman (arts. 44 ff.)

Article 24

Protection of the child

86. The child is protected by civil and criminal law.

(a) The right to a name

87. A child born in wedlock bears the name of his father (art. 2 of the Family Code). If he is disowned, he takes the name of his mother or his mother's father. A child born out of wedlock bears the name of the parent from whom his descent is established (art. 3 of the Family Code). A child whose descent has not been duly established takes the name given to him by the civil registrar to whom his birth or discovery has been declared (art. 5 of the Family Code).

88. Togolese laws governing civil status make it obligatory for parents to declare their children within 30 days of birth. However, the Government Attorney may, following an investigation, authorize declarations which had not been made within the prescribed period (art. 3 of the transitional provisions of the Family Code).

(b) The right of the child to a nationality

89. In principle, every child is entitled to a nationality. This is regulated in Togo by Ordinance No. 78-34 of 7 September 1978.

90. A child may acquire Togolese nationality if he is born either of a Togolese father or of a Togolese mother (art. 32 of the Constitution).

Article 25

The right to take part in the conduct of public affairs

91. The conduct of public affairs is the responsibility of all citizens and they must participate in it directly or indirectly. This right is affirmed in the Constitution.

92. It is a proven fact that in everyday life all citizens participate in the conduct of public affairs.

(a) The right to vote and to be elected

This point has already been dealt with in the core document (HRI/CORE/1/Add.38).

(b) The right to have access on terms of equality to the public service

93. All citizens without distinction have equal opportunities to accede to the public service. Ordinance No. 1 establishing the civil service regulations of the Togolese Republic of 4 January 1968 and its implementing decree specify the conditions of access to the public service.

94. The Togolese Government ensures that all citizens have equal employment opportunities (art. 37 of the Constitution).

(c) The right of everyone to the protection of the law, without discrimination on grounds of race, language, religion, sex or political opinion

95. This point has already been dealt with.

Article 27

The guarantee of the rights of minorities

96. Ethnic and religious minorities have the right to practise their own religion, to manifest their own culture and to use their own language. In Togo, the official language is French.

97. These rights derive from the freedom of religion and association which is recognized by the Togolese Constitution.

Conclusion

98. All the provisions of the Covenant are now incorporated into new legislation: the Constitution, the Press Code, the Electoral Code, the Charter of Political Parties. The new Constitution gives a prominent place to human rights questions and ensures that political and trade union freedoms and the freedom of association and of the press are guaranteed.

99. After a period of political tension, the organization of the presidential elections and of the forthcoming legislative elections, the setting up of all the democratic institutions provided for by the Constitution of the Fourth Republic are evidence that there now exists a State governed by the rule of law, which all the authorities should now promote.

100. The President of the Republic and the Togolese Government have undertaken to do everything possible to ensure that rights are guaranteed effectively. In that respect, they wish to cooperate as closely as possible with the Human Rights Committee and other United Nations institutions for the defence of human rights. The result can only be to further the cause of human rights. This concludes the report of the Togolese Government.

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